

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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AUG 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF
AMENDMENT OF SECTION 73.202(b)
TABLE OF ALLOTMENTS,
FM BROADCAST STATIONS
(THORNDALE, TEXAS)

MM Docket No. 99-243
RM-9675

To: The Chief, Allocations Branch

**REPLY TO OPPOSITION TO
PETITION FOR RECONSIDERATION**

Cameron Broadcasting Company ("Cameron Broadcasting"), permittee of KHTZ(FM), Cameron, Texas, by counsel, pursuant to 47 CFR §1.429(g), respectfully submits its *Reply to Opposition to Petition for Reconsideration* in the above-captioned matter. In support thereof, the following is stated:

1. On August 2, 1999, Cameron Broadcasting filed its Petition for Reconsideration ("Petition") requesting that the Commission rescind the Notice of Proposed Rule Making, DA 99-1292, released July 2, 1999 in MM Docket No. 99-243, RM-9675 and dismiss the rule making in its entirety. Cameron Broadcasting simultaneously filed a Motion for Stay of Proceedings.
2. On August 9, 1999, Houston Christian Broadcasters, Inc. ("HCBI") filed its opposition to the stay motion. On August 17, 1999, HCBI filed its Opposition to Petition for Reconsideration ("Opposition").

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3. In the Opposition, HCBI acknowledges that the NPRM is in conflict with Cameron Broadcasting's existing construction permit for KHTZ(FM), Cameron, Texas. HCBI argues, however, that the grant of the construction permit was an error on the part of Mass Media Bureau because HCBI filed its Petition for Rule Making first in time.¹

4. HCBI overlooks the fact that the Commission never entered its Petition for Rule Making into the broadcast engineering database at any time prior to the issuance of the NPRM. The mere filing of a petition does not automatically create rights to any procedural or substantive benefits. As stated in 47 CFR §1.401(e):

Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

If a Petition for Rulemaking does not warrant substantive consideration, it does not matter when in time it was filed.

5. In the present case, HCBI's Petition was defective as filed and merits no consideration by the Commission. HCBI requested reservation of a commercial channel for noncommercial use despite the availability of a noncommercial channel on Channel 211A at Thorndale, Texas. HCBI also sought cut-off protection for its own application despite being at odds with every reported case where such cut-off protection has been afforded. Therefore, the HCBI Petition was unacceptable for rule making and the error was not in the

¹ Opposition, p. 2.

Bureau's grant of Cameron Broadcasting's construction permit, but in the subsequent issuance of the NPRM.

6. In defense of its Petition, HCBI argues that there "are no noncommercial FM channels available for use at Thorndale, Texas."² As support for this idea, HCBI did not present appropriate evidence sponsored by a qualified broadcast consulting engineer. Instead, the HCBI attorney merely revisited observations made in its original engineering study.³ However, the original HCBI engineering statement is inaccurate.⁴ It does not take into consideration the fact that the rules for allocating a noncommercial channel are substantially different from those governing commercial allocations. The HCBI study involved a limited set of coordinates that do not rule out other viable locations that would support a noncommercial channel.⁵ Moreover, HCBI's study is based on a much greater power than would be needed to actually allocate a channel using the rules governing the reserved band.⁶ Finally, the HCBI study failed to provide any sort of detailed channel 6 study.⁷ As a result, the HCBI study missed the area of zero population that would be permissible under the channel 6 interference rules for noncommercial broadcast facilities.⁸

² Opposition, p. 4.

³ Id.

⁴ See Engineering Statement of Doug Vernier, attached hereto as Exhibit 1, p. 1.

⁵ Exhibit 1, p. 1.

⁶ Exhibit 2, p. 2.

⁷ Id.

⁸ Id.

7. Cameron Broadcasting has established that HCBI is not entitled to reservation of the commercial channel for noncommercial use. Nor is HCBI entitled to the cut-off protection it sought in the Petition. Unfortunately, as foreseen in the Cameron Broadcasting motion for stay, yet another party from the Thorndale, Texas 257A proceeding has entered the fray by counterproposing Channel 286C3 at Thrall, Texas.⁹ This new circumstance has increased the harm to Cameron Broadcasting and its existing construction permit. Given this state of affairs, the only just result is to grant the instant Petition for Reconsideration and Motion for Stay of Proceedings, dismiss the HCBI Petition for Rule Making and allow Cameron Broadcasting to broadcast in accordance with the terms of its construction permit.

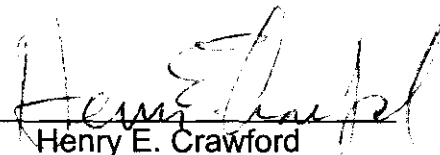
WHEREFORE, Cameron Broadcasting Company respectfully requests that the Commission rescind the Notice of Proposed Rule Making, DA 99-1292, released July 2, 1999 in MM Docket No. 99-243, RM-9675, and otherwise dismiss this rule making in its entirety.

August 27, 1999

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Respectfully Submitted,

Cameron Broadcasting Company

By: 
Henry E. Crawford
Its Attorney

⁹ See Comments, Opposition and Counterproposal of Elgin FM Limited Partnership, filed on August 23, 1999.



Engineering Statement

August 26, 1999

We have been asked by Cameron Broadcasting Company ("Cameron Broadcasting") to review the engineering prepared by Lechman and Johnson, Inc for the Houston Christian Broadcasters, Inc ("HCB") with regard to HCB's request to amend Section 73.207 of the Commission's Rules to assign channel 268A to Thorndale, Texas and to reserve the channel for noncommercial educational use. (MM Docket No. 99-243, RM-9675.)

Page # 2 of the Lechman and Johnson, Inc engineering statement states "Table II is a summary sheet of the 20 FM channel studies which shows that there are no reserved channels workable at Thorndale."

This statement is inaccurate in that we have identified channel 211 as being a channel that would provide a better than 60 dBu service signal over Thorndale from a site restricted to 5.87 miles north of Thorndale. Our study shows that the class A station at the study coordinates could have a power of 300 watts from an antenna height above average terrain of 100 meters. We studied the channel-six TV interference implications and in our first engineering statement provided documentation as to the channel's availability and to the lack of a channel-six problem with regard the site. We also provided a coverage map of the proposed station's 60 dBu which covered all of Thorndale.

As we review the Lechman and Johnson, statement we notice a number of problems with the study.

Thorndale city coordinates were used avoiding others site locations that could have worked.

The study did not attempt to identify a reserved channel that would work to serve Thorndale with a minimum 60 dBu service signal from any other coordinates.

The 6 kW study power used for the study was higher than it needed to be and therefore overly preclusive.

Since channels in the FM reserved band are not allocated through minimum spacings requirements but are identified on a contour to contour basis, channels that would support less than 6 kW could not be identified under the Lechman and Johnson Inc study. Consequently, the Lechman and Johnson Inc study was much more preclusive than it needed to be. There are many non-commercial educational channels operating with less than the maximum power for class A operation.

No channel-six TV study was provided:

Lechman and Johnson Inc states

“Also, Thorndale is within the Grade A (68 dBu) of TV channel 6 station KCEN, Temple, Texas. Section 73.525 of the Rules and Regulations set forth technical requirements that must be met to assign a NCE-FM channel near a Channel 6 TV station. It would be difficult, if not impossible, to meet those requirements if a channel was workable. “

This statement was made without any documentation to back up the claim that the channel could not be workable due to the channel-six TV station's presence. From the site we have proposed, north of Thorndale, our channel-six study (provided in our previously filed engineering statement) clearly shows the site to be workable under the rules. While up to 3000 people are allowed within the calculated TV-6 interference area, we calculated that there were no people at all within the interference area.

Consequently, the Lechman and Johnson Inc. engineering study to identify a non-commercial educational reserved FM channel was performed in an insufficient manner to identify all NCE channels available to serve Thorndale.

Doug Vernier

Declaration:

I, Doug Vernier, declare that I have received training as an engineer from the University of Michigan School of Engineering. That, I have received degrees from the University in the field of Broadcast Telecommunications. That, I have been active in broadcast consulting for over 25 years;

That, I have held a Federal Communications Commission First Class Radiotelephone License continually since 1964. In 1985, this license was reissued by the Commission as a lifetime General Radiotelephone license no. PG-16-16464;

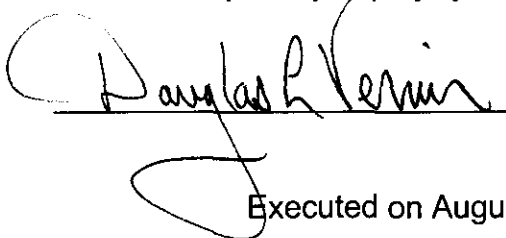
That, I am certified as a Professional Broadcast Engineer (#50258) by the Society of Broadcast Engineers, Indianapolis, Indiana. (Re-certified 11/95.)

That, my qualifications are a matter of record with the Federal Communications Commission;

That, I have been retained by Cameron Broadcasting, and as such have prepared the engineering showings appended hereto;

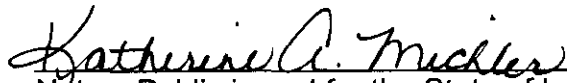
That, I have prepared these engineering showings, the technical information contained in same and the facts stated within are true of my knowledge;

That, under penalty of perjury, I declare that the foregoing is correct.

 Douglas L. Vernier

Executed on August 26, 1999

Subscribed and sworn before me this 26th day of August, 1999.


Notary Public in and for the State of Iowa

My Commission Expires August 10, 2001

CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing Reply to Opposition to Petition for Reconsideration have been served by United States mail, postage prepaid this 27th day of August, 1999 upon the following:

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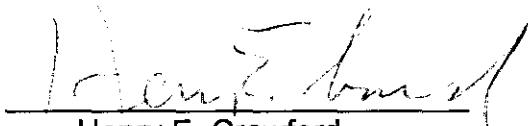
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